

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES & SENATE JOINT HEARING 57th LEGISLATURE - REGULAR SESSION COMMITTEES ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN CINDY YOUNKIN and CHAIRMAN WILLIAM CRISMORE**, on March 14, 2001 at 3:00 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)  
Rep. David Wanzenried (D)  
Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Coke (R)  
Sen. Lorents Grosfield (R)  
Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Glenn Roush (D)  
Sen. Bill Tash (R)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Members Excused:** Rep. Rod Bitney (R)

**Members Absent:** None.

**Staff Present:** Holly Jordan, Committee Secretary  
Melissa Rasmussen, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 626, 3/9/2001

Executive Action:

**HEARING ON HB 626**

**Sponsor:** REP. MATT MCCANN, HD 92, Harlem

**Proponents:** Chris Tweeten, RWRCC  
Joseph McConnell, FBICC  
Susan Cottingham, RWRCC  
Barbara Cosens, RWRCC  
Bill Grieman, RWRCC  
Gene Etchart, RWRCC  
Thomas Fredericks, Fort Belknap Tribes  
Kay M. Blatter, MRJBOC  
Jack Gist, MRJBOC  
Chris Leahy, Fort Belknap Tribes  
REP. JOHN MUSGROVE, HD 91, Havre  
Randy Perez, Fort Belknap Tribes  
Woldezion Mesyhinna, Fort Belknap Tribes  
Max Maddox, self, Chinook  
Lee Cornwell, Glasgow Irrigation  
John Bloomquist, Milk River JBC  
Kurt Martin, DNRC  
Mike Murphy, MWRA  
SEN. BEA MCCARTHY, SD 29, Anaconda

**Opponents:** Earl Old Person, Blackfeet Tribe  
Ervin Carlson, Blackfeet Tribe  
REP. CAROL JUNEAU, HD 85, Browning  
Harold J. Main, Gros Ventre Treaty Rights Task Force  
Commission  
James Main, Sr., Gros Ventre  
Roy S. Jolman, Blackfeet Tribe

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 0.7}***

**REP. MATT MCCANN, HD 92, Harlem,** stated HB 626 is the culmination of more than a decade's worth of work. There has been extensive public involvement in the drafting of the bill.

**Proponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 3.4}***

**SEN. GREG JERGESON, SD 46, Chinook,** stated Fort Belknap is a part of his Senate District. The people of his district depend on the Milk River. These negotiations started 15 years ago. He stated he is fully satisfied with the results of the negotiations.

**Chris Tweeten, RWRCC,** explained the process of negotiations and the history of HB 626. He submitted a technical amendment **EXHIBIT(nah58a01)**. The amendments do not change the substance of the bill in any way. The language of this compact has been negotiated word for word. Any other offered amendments would be very complicated as they will also have to be negotiated and may jeopardize the compact. He stated, Attorney General Mike McGrath could not attend the hearing but is in support of HB 626. He urged a do pass.

**Joseph McConnell, FBICC,** submitted written testimony **EXHIBIT(nah58a02)**. He also submitted a document titled Fort Belknap Indian Community **EXHIBIT(nah58a03)**.

**Susan Cottingham, RWRCC,** stated a lot of work has gone into this bill. She assured the committee that the federal team has worked very hard on the bill. They have stated that they will continue to work with RWRCC to put the federal legislation together. She submitted four documents to the committee **EXHIBIT(nah58a04)**, **EXHIBIT(nah58a05)**, **EXHIBIT(nah58a06)** and **EXHIBIT(nah58a07)**. She stated that this has been a long process with a lot of involvement. She submitted three letters **EXHIBIT(nah58a08)**, **EXHIBIT(nah58a09)** and **EXHIBIT(nah58a10)**. She stated the measures in HB 626 are designed to allow the tribe to put their full water claim to use, and keep the folks downstream from the impacts of the development. That will cost the state and federal government millions of dollars. The money in the Rocky Boy federal bill has been used to do engineering and environmental studies at the Milk River. All of the different proposals that water users and others have come forth with will be looked at. Then when the engineering and environmental review are finished, the economics of all of the proposals will be looked at. At that point a

decision will be made on which project to go forth with. Another bill will then be brought to the legislature to authorize the spending of those monies. This will be a multi-year process. It will involve continuing negotiations with the Blackfeet Tribe as to which headwaters on the Milk River are affected. It will involve some very intense discussions with the Federal time. This first step is very critical in going forth with this compact.

**Barbara Cosens, RWRCC**, gave a power point presentation which was submitted on disk **EXHIBIT(nah58a11)**. {Tape : 1; Side : B; Approx. Time Counter : 0.1}

**Bill Grieman, RWRCC**, gave a background on his experience on this bill. He is excited about the potential for coordinating and making the system a little bit easier to manage. He talked about the benefits of having this system in place.

**Gene Etchart, RWRCC**, submitted written testimony **EXHIBIT(nah58a12)**.

**Thomas Fredericks, Fort Belknap Tribes**, stated that this bill is a dream come true. He gave a history of the bill. He asked for a do pass.

**Kay M. Blatter, MRJBOC**, expressed his support for the compact, especially with the mitigation. He felt the compact would ensure a proper irrigation supply for the districts. There are 34,000 acres along the Milk River that are undergoing reclamation. There are approximately 140,000 acres in the Milk River system. He stated that the St. Mary's water system needs support as well.

**Jack Gist, MRJBOC**, stated he has been trying to get order into the system of water rights for over fifteen years. The bill is a good compromise.

**Chris Leahy, Fort Belknap Tribes**, declared the water compact is good for all citizens on and off the reservations. If the compact is not approved by one of the parties it goes into litigation. The tribes feel the compact is a good alternative to litigation. With appropriate funding there is the potential for tribes to fully develop their treaty water rights. He stated there is the potential to avoid litigation. There is a way to deal with water rights and enforcement issues. Perfect enforcement is not attainable. He hypothesized that the alternative to the water compact is chaos.

**REP. JOHN MUSGROVE, HD 91, Havre,** expressed his support for the compact.

**Randy Perez, Fort Belknap Tribes,** gave a brief history of his involvement with the water compact process. He avowed as a water user the litigation would give him priority. There are also numerous economic benefits associated with the compact.

**Woldezion Mesyhinna, Fort Belknap Tribes,** submitted written testimony **EXHIBIT**(nah58a13).

**Max Maddox, representing himself, Chinook,** narrated he is a fourth generation irrigator, he supports the compact. The compact would allow for a fair process.

**Lee Cornwell, Glasgow Irrigation,** encouraged the committee to support the water compact.

**John Bloomquist, Milk River JBC,** informed the committee that over a year ago the Joint Board of Control asked him to begin reviewing graphs of compacts for the Fort Belknap Reservation. The materials provided during the process made it easier to provide input and comment on the compact. There are critical implications involved within the compact. The document is well crafted, and beats the alternative of litigation.

**Kurt Martin, DNRC,** expressed their support for the water compact. The system is complex. The compact provides a solution to numerous problems in the Milk River area.

**Mike Murphy, MWRA,** declared his support for the compact. The study was extensive with lots of public input. The compact is a good document for all parties.

**SEN. BEA MCCARTHY, SD 29, Anaconda,** informed the committee she is the only Senator left in office who served on the water compact commission.

**Opponents' Testimony:**

**Earl Old Person, Blackfeet Tribe, and Ervin Carlson, Blackfeet Tribe,** read aloud for written testimony in opposition to the bill **EXHIBIT**(nah58a14).

**{Tape : 2; Side : A}**

**REP. CAROL JUNEAU, HD 85, Browning,** argued it is hard for tribes to take a position against one another. She urged the committee to not pass the bill.

**Harold J. Main, Gros Ventre Treaty Rights Task Force Commission,** expressed his regret for speaking in opposition to a fellow tribe. He argued there was not enough community involvement put into the bill. He stated that the input from his people was not incorporated into the bill. There were concerns with language and treaty rights. He warned if treaty rights are being discussed in the compact they need to be cleared through the tribes. He questioned the need to hurry the compact and disagreed with having a joint hearing to speed up the process. There was a hearing held in March on the Fort Belknap Reservation in which his people opposed the compact. He argued that his people should take the lead with this compact. People do not have enough knowledge about the compact to pass it. He stated their requests to be involved in the process were ignored. The compact puts tribe against tribe. He asked for more clarification regarding definitions. He informed the committee that his tribe hired an attorney from New Mexico to help them interpret the compact. He accused Fort Belknap of not keeping their word in holding out for thirty days to allow the tribe to go page by page through the compact with their attorney. He asked the committee to not take action until they have a chance to go through the document with their attorney.

**James Main, Sr., Gros Ventre,** spoke in opposition to the bill and submitted written testimony **EXHIBIT (nah58a15)**.

**Questions from Committee Members and Responses:**

**SEN. LORENTS GROSFIELD** asked if the Blackfeet were currently negotiating with the state. **Mr. Old Person** stated that there is involvement with the state, but not actual negotiations. **SEN. GROSFIELD** told him he asked the question because **Mr. Old Person** made the statement that the only way out was through litigation. He stated he would agree with that if the Blackfeet were involved in negotiations and they had not worked.

**REP. RON ERICKSON** asked if there had been a meeting between the Fort Belknap Tribe and the Natural Resource Committee. **Mr. Tweeten** said there had not been because it is not feasible to take the committee on the road for every compact. **REP. ERICKSON** questioned the quickness of the bill. **Mr. Tweeten** declared the sense of urgency is based on the coalition that has formed. Now is a critical time when action must be taken. This is an opportunity to move forward. He stated that the negotiations have been conducted on a government-to-government basis.

**REP. JOAN HURDLE** asked if there was any urgency associated with headwaters, dams or priority dates. **REP. MCCANN** stated that many of the water settlement issues have been ongoing. There is ongoing communication between the tribes. The issues are not a surprise. Stopping the process would not be beneficial. There is language within the compact to address those issues. **REP. HURDLE** expressed her concerns with the urgency of the compact. **REP. MCCANN** stated that the opposition overshadows the negotiations that have taken place. The people who have negotiated have come to some decisions, that is a big deal. The compact is a complex document that has been in the works for a long time. **REP. HURDLE** asked if it was so urgent that those considerations could not be made. **REP. MCCANN** declared that the opposition has been aware that the compact is going to happen.

**SEN. BILL TASH** asked how the water is prioritized. **Mr. Bloomquist** informed him that treaties help regulate the waters. The compact helps to establish the priority.

**SEN. TASH** inquired about the provisions in HB 626 for the opportunity to conduct water banking and water transfers. **Mr. McConnell** stated that subordination in the compact allows for the transfer of water. **SEN. TASH** stated it would be hard to settle priority under the compact. **Mr. McConnell** told the committee he understood the concerns. However, issues continue to resurface within the tribal dialogue.

**SEN. MIKE TAYLOR** questioned how the concerns about the Blackfeet suing because of the compact. **Mr. Leahy** stated there is no way to make the tribes agree. There will be litigation regardless of the compact. The Blackfeet have chosen to break off negotiations with the state. They have tried to work with the tribe. He argued that the compact anticipates the Blackfeet wanting more of the flow and the Fort Belknap has agreed to the risk of taking less.

**SEN. TAYLOR** asked how long the water compact negotiations have been taking place. **Ms Cottingham** told him it has been fourteen years. Getting the draft out a year ahead of time has been beneficial to everyone. She stated that the commission is not going to walk away from the Blackfeet negotiations. They are critical to the success of the compact. She stated they are not pitting one tribe against another. The truth is they share the same streams. There is nothing in the compact to end negotiations with the Blackfeet.

**SEN. GLENN ROUSH** inquired if there had been any ongoing official negotiations between the Blackfeet and the state water compact

commission. **Mr. Tweeten** informed him there have been. In 1992 they received a letter from the tribe that told them it was no longer within their best interests to negotiate with the commission. When a tribe terminates negotiations, they are referred to water board. There was an understanding that the Attorney General would not proceed with litigations. **SEN. ROUSH** asked if within the agreement was the Blackfeet brought into the discussion within the last three years. **Mr. Tweeten** told him yes. **Barbara Cosens, DNRC**, remarked that the Blackfeet have been involved in the discussions. Their issues have been addressed in the compact.

**SEN. ROUSH** questioned if the Blackfeet have been involved in negotiations. He further wondered how they felt about the headwaters being on their reservations. **Mr. Old Person** stated that people say they are involved, but they are not. The changes within their tribal governments are not a good excuse. He stated that they have met with members of the Fort Belknap Tribe, but they have not addressed their concerns.

**SEN. BEA MCCARTHY** asked if the four points could be addressed. **Ms Cosens** addressed the four issues brought up by the Blackfeet Tribe. 1. Tribe against tribe: She stated that the allocation of the natural flow between the Blackfeet and Fort Belknap on the Milk River that the two tribes must sit down and talk about it. They are on the same stream. The compact helps discussion between the two tribes. 2. Tiber Reservoir: She declared it was a area planned for irrigation. The compact realizes that Fort Belknap is junior to the Blackfeet reservation. If the Blackfeet take all of their water rights, there would still be 100,000 acres available for contracting. 3. St. Mary's: The diversion is on the Blackfeet Reservation. The compact acknowledges that the environmental impact concerns by the Blackfeet must be addressed. If there is any discussion regarding the St. Mary's diversion the Blackfeet must be invited to the table. 4. 1855 priority date: The entire area was split in 1888. She declared there are two legal theories under which the tribes can have the same priority date. One, the Gros Ventres were part of the treaty and now they are on the Fort Belknap. Second, is the idea of tacking. She stated there is no legal theory under which the two reservations can have a different priority date.

*{Tape : 2; Side : B}*

**REP. RICK LIABLE** asked if this was the first compact ever negotiated where the upstream flows were not included. **Mr. Tweeten** said no. Fort Peck was also assessed in the same manner. **REP. LIABLE** questioned how unresolved upstream water rights were handled in the past. **Mr. Tweeten** informed him at Fort Peck there



was stored water. In Northern Cheyenne they wrote into the compact who had prior rights. **REP. LIABLE** asked if the Blackfeet concerns could be resolved. **Mr. Tweeten** stated his experience has shown him that two parties need to be at the table negotiating. The Blackfeet have not shown that type of willingness. If they were to come to the table the issue could be resolved.

**SEN. KEN TOOLE** wondered how far along the process was. **Mr. Tweeten** declared that the compact was approved by the commission, Fort Belknap and now it must be approved by the legislature.

**SEN. TOOLE** asked if the compact was precipitating the conflict with the Blackfeet Tribe. **Mr. Tweeten** said they have the right to go to court. **SEN. TOOLE** asked what the likelihood of Congress moving forward with the compact is, if they know of the conflicts. **Mr. Tweeten** stated the issues have been taken into consideration and that the compact takes into account the concerns of the Blackfeet Tribe.

**REP. BILL EGGERS** asked if the federal government had prepared an assessment of the compact in regard to the Blackfeet water rights. **Ms Cosens** declared it was her understanding that the federal government had negotiating teams who do assessments of what the tribal agreement is. The team has participated in all of the negotiations. The assessment has been done, but she does not know if it has been communicated to Washington D.C. **REP. EGGERS** inquired if there was an evaluation and assessment on the Blackfeet Reservation. **Ms Cosens** stated that there has not been an assessment done on the reservation. They have done an evaluation of what the water right might be on the reservation, but they have not shared it with the commission. **REP. EGGERS** asked for some assurance that there is no reverse impact in settling the compact in such a manner that the Blackfeet will not sue the state because they did not get enough water right. **Ms Cosens** stated that no matter how big the water right is for Fort Belknap, it is really an administrative provision which will decide when the tribes get their water.

**REP. GAIL GUTSCHE** asked what **Mr. Main** was specifically opposed to in the compact. **Mr. Main** charged that he objected to the waiving of claims and that the Blackfeet did not have adequate opportunity to comment. **REP. GUTSCHE** asked how much time would he need to review the compact. **Mr. Main** stated until the end of the session if possible.

**SEN. GROSFIELD** questioned if it was in the spirit of protecting their heritage that the Fort Belknap council unanimously approved a resolution supporting the compact. **Mr. McConnell** proclaimed

that water rights have been an issue since he was a young council member. The resolution was what the council felt was best after reviewing the compact and lengthy discussions.

**SEN. MACK COLE** questioned if there could be resolution between the two tribes. **Ms. Cottingham** declared that Blackfeet and Fort Belknap have been working together. They want to know how they could get back to the table after the legislative session.

**SEN. COLE** asked for an explanation about the Milk River coordinating committee. **Ms Cosens** stated that the committee coordinates between the entities using the water system. The grant loan program established by the compact sets up an account for future programs. The loan program is for efficiency uses along the river. The grants are to be paid back by the irrigator. **SEN. COLE** inquired about the costs for improvements. **Ms Cosens** said there will be a substantial cost associated with development of the water rights on the reservations and the mitigation measures. They will be asking the federal government for financial help.

**SEN. DALE MAHLUM** asked if a large amount of water being discussed originates on the Blackfeet nation. **Ms Cosens** stated that a small amount originates on the Blackfeet nation. **SEN. MAHLUM** inquired about the percentage of water that comes from Canada. **Ms Cosens** stated in the treaty between Canada and the USA differs depending on the time of year. It is roughly 50%.

**Closing by Sponsor:**

**REP. MCCANN** stated it is hard to anticipate what will be discussed in these types of meetings. He argued once the Blackfeet come to the table the issues would be resolved. He encouraged the committee to search for the answers that make sense. He proclaimed that the compact is built on reason and trust.

The following exhibit was submitted at the end of the hearing.

A packet of information from Fort Belknap, including letters and a disc **EXHIBIT(nah58a16)**.

**ADJOURNMENT**

Adjournment: 7:00 P.M.

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REP. CINDY YOUNKIN, Chairman

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SEN. WILLIAM CRISMORE, CHAIRMAN

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HOLLY JORDAN, Secretary

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MELISSA RASMUSSEN, Secretary

CY/HJ  
WC/MR

**EXHIBIT** (nah58aad)